

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
CIVIL CASE NO. 5:22-cv-00136-MR**

JAMES KITCHEN, )  
                    )  
Plaintiff,       )  
                    )  
vs.               )  
                    )  
TODD E. ISHEE, et al., )                   **ORDER**  
                    )  
Defendants.      )  
                    )  
\_\_\_\_\_

**THIS MATTER** is before the Court *sua sponte*.

The pro se incarcerated Plaintiff filed this action pursuant to the 42 U.S.C. § 1983. [Doc. 1]. On January 18, 2023, the Court dismissed the Complaint on initial review and granted the Plaintiff 30 days to file a superseding Amended Complaint. [Doc. 11]. The Plaintiff was cautioned that, “[s]hould Plaintiff fail to timely file an Amended Complaint in accordance with this Order, this action will be dismissed without prejudice and without further notice to Plaintiff.” [Id. at 13].

The Plaintiff has failed to file an Amended Complaint, and the time to do so has expired. The Plaintiff appears to have abandoned this action, and the Court is unable to proceed. This case will therefore be dismissed without prejudice. See Fed. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to

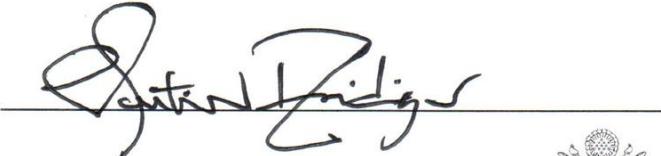
comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."); Link v. Wabash R.R. Co., 370 U.S. 626, 630-33 (1962) (although Rule 41(b) does not expressly provide for *sua sponte* dismissal, Rule 41(b) does not imply any such restriction and a court has the inherent power to dismiss a case for lack of prosecution or violation of a court order).

**IT IS, THEREFORE, ORDERED** that this action is **DISMISSED WITHOUT PREJUDICE.**

The Clerk of Court is respectfully directed to terminate this action.

**IT IS SO ORDERED.**

Signed: March 6, 2023



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Martin Reidinger  
Chief United States District Judge

